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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re Application of

Atty. Docket

Heu-Gon Kim

5000-1-181

Serial No. 09/750,576

Group Art Unit: 2872

Filed: December 28, 2000

Examiner: Audrey Y Chang

Title: FABRICATION METHOD OF APODIZED OPTICAL FIBER GRATING...

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA22313-1450

PETITION UNDER 37 C.F.R. § 1.181
PREMATURITY OF FINAL REJECTION

Sir:

Applicant respectfully requests the Assistant Commissioner for Patents to withdraw the final rejection as it was premature.

FACTS

1. Applicants' attorney has received a Final Office Action on January 16, 2004. (A copy of First Office Action is enclosed herein).
2. The Examiner has cited a newly-found reference Nishio (US 5,557,317) in making the current art rejections and deemed those rejections to be final. The Examiner had cited different references Chow (US 6,029,175) and Oda (JP 07-295943) in the previous office action dated November 19, 2003.
3. The Examiner suggests (item 40) that it was the Applicant's amendment that necessitated the new grounds for rejection.

4. The Applicant disagrees with this assertion. The claim amendments by the Applicant were directed to clarifying the claim language of the English translation of the counterpart foreign application. This does not diminish the fact that at least claims 1 and 9, as originally-filed in the U.S. Patent Office, distinguish patentably over the prior art applied in rejecting those claims. The distinguishing limitations of original claims 1 and 9 remain in claims 1 and 9 as currently worded.

5. Final rejection of the claims was, accordingly, premature due to at least two separate reasons. First, as to original claim 1, none of the references applied in rejection, alone or in combination, discloses, suggests or features the first clause of step (b) which reads, “allocating a fixed region in a memory within the predetermined node in response to the reception of the new program data . . .” Since new program data can presumably be of any length, why would it have been obvious to allocate a fixed region in a memory? Moreover, since step (a) reads, “transmitting a new program data and a control signal to the predetermined node . . . ,” why would it have been obvious that the “allocating” is “in response to the reception of the new data” rather than in response to reception of the control signal?

Second, at least as to original dependent claim 9, none of the applied references, alone or in combination, disclose, suggest or feature “repeating said step (b), (c), (d) and (e) for changing the program in the remainder nodes arranged in said network.”

More particularly, Chow discloses a first computer providing information about a changed object of interest, and a second computer for maintaining in its cache the

information received from the first computer. The second computer forwards this information to computers of interested parties in response to receiving respective demands from the latter computers. In a sense, the second computer's role resembles that of the network management system (NMS) of the prior art FIGs. 1 and 2 of the present application, not the claimed invention.

As to the Oda reference, it fails to disclose or suggest the above-quoted language from claim 9 in combination with the language of step (a) of the base claim 8 which reads, "transmitting a new program data and a control signal to said one node coupled to said network management system (NMS)." That is, the NMS cannot be characterized as residing in each node, but is instead coupled to "said one node." Oda, by contrast, relates to passing an updating program in a chain A, B, C of processors. Processor A as the master passes the updating program to processor B which serves as the slave. Then, processor B, acting as the master, passes the updating program to processor C which serves as the slave. See Abstract, Constitution ("The slave equipment which performs reception becomes the master equipment"); [0021] "oneself becomes a master device"). Oda, for at least this reason, does not disclose or suggest modifying the prior art FIGs. 1 and 2 of the present application to resemble the NMS-controlled, chained passing of updates according to the present invention as recited in claim 9.

6. The Final Office Action changed the references applied in rejecting both claims 1 and 9, and either change would, in and of itself, dictate that the finality of the action was premature.

RELIEF REQUESTED

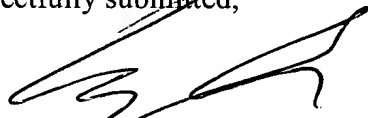
The Assistant Commissioner is respectfully requested to withdraw the finality of the rejection as the Examiner has cited a new reference not responsive to Applicant's earlier amendment.

FEE

The Assistant Commissioner is hereby authorized to charge Deposit Account No. 502-470 for any petition fee which may be due. However, since it is believed that the current petition is the result of circumstances not attributable to any fault of Applicants or their representatives, it is respectfully suggested that no fee is due.

Applicants' undersigned attorney may be reached by telephone at (201)226-9245. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,



Steve Cha,
Attorney Reg. 44,069
(201)226-9245

CHA & REITER, LLC
210 Route 4 East, #103
Paramus, NJ 07652

CERTIFICATE OF MAILING

It is hereby certified that this correspondence is being deposited with the United States Postal Service as first-class mail in an envelope addressed to:

COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, VA 22313-1450

On 4/6/04

By Steve Cha